

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-01 INR-07

L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15

USIA-06 AID-05 PC-01 EB-08 OMB-01 TRSE-00 COME-00

HEW-04 DHA-02 /077 W

-----221526Z 067434 /44

R 221230Z APR 77

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 1201

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

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E.O. 11652: N/A

TAGS: PGOV, PINT, ECON, BR

SUBJ: NON-POLITICAL REFORMS DECREED BY PRESIDENT UNDER AI-5

REFS: (A) BRASILIA 3035 (B) BRASILIA 2970 (C) BRASILIA 2966

1. SUMMARY: IN ADDITION TO THE POLITICAL, ELECTION AND JUDICIAL REFORMS OF APRIL 13-14 (REFTELS A AND B), PRESIDENT GEISEL USED HIS DECREE POWERS UNDER AI-5 TO AMEND SECTIONS OF THE CONSTITUTION DEALING WITH TAXATION, SOCIAL WELFARE LEGISLATION AND SEVERAL MORE MINOR MATTERS. THE MOST IMPORTANT OF THESE, AN AMENDMENT TO ARTICLE 153, ALLOWS THE GOVERNMENT TO INTRODUCE NEW TAXES DURING THE COURSE OF THE FISCAL YEAR BY COMPLEMENTARY LEGISLATION RATHER THAN RESORT TO EXCEPTIONAL DECREE POWERS. THE REACTION OF THE BUSINESS COMMUNITY SO FAR HAS BEEN MOSTLY NEGATIVE, BUT THERE MAY BE VALID ECONOMIC REASONS FOR GREATER DISCRETIONARY FISCAL POLICY AUTHORITY. DOUBTS HAVE ALSO BEEN EXPRESSED ABOUT THE ADVISABILITY OF INCLUDING SUCH CHANGES IN THE LARGER PACKAGE OF BASIC INSTITUTIONAL REFORM. END SUMMARY.

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2. THE NEW VERSION OF ARTICLE 153--THE SECTION OF THE BRAZILIAN CONSTITUTION WHICH GUARANTEES INDIVIDUAL LIBERTIES AND PROPERTY RIGHTS--AMENDS THE TAXATION POWERS OF THE FEDERAL GOVERNMENT BY PERMITTING COMPLEMENTARY TAX LEGISLATION TO ENTER INTO EFFECT AFTER THE BEGINNING OF A FISCAL YEAR. PREVIOUSLY, SUCH LEGISLATION (WITH SEVERAL CONSTITUTIONALLY-

DETAILED EXCEPTIONS, SUCH AS CUSTOMS DUTIES) COULD ONLY TAKE EFFECT AT THE START OF A NEW FISCAL YEAR UNLESS IT WAS ENACTED UNDER THE PRESIDENT'S SPECIAL DECREE POWERS, AS IN THE CASE OF THE REFUNDABLE GASOLINE DEPOSIT. THE AMENDMENT GIVES THE GOVERNMENT ANOTHER MECHANISM OF ECONOMIC CONTROL AND FURTHER FLEXIBILITY IN ITS EFFORTS TO REGULATE THE ECONOMY. FINANCE MINISTER HENRIQUE SIMONSEN SAID THAT IT WOULD NOT HAVE ANY GREAT CONSEQUENCES ON THE GOVERNMENT'S CURRENT ECONOMIC POLICIES.

3. REACTION AMONG THE BUSINESS COMMUNITY TO THIS AMENDMENT WAS LARGELY NEGATIVE. BUSINESSMEN SAID IT WOUNDS THE PRINCIPLES OF INDIVIDUAL LIBERTY AND WOULD CREATE A CLIMATE OF UNCERTAINTY WITH REGARD TO PRIVATE INVESTMENT BECAUSE OF THE POSSIBILITY OF IMPOSITION OF NEW OR INCREASED TAXES AT ANY TIME. AN EDITORIAL IN THE GAZETA MERCANTIL STATED THAT THE NEW TAXING AUTHORITY WOULD BE A "STRONG DISINCENTIVE TO PRIVATE INVESTMENT" AND QUESTIONED THE USE OF THE CONGRESSIONAL RECESS TO MAKE CHANGES IN ECONOMIC LEGISLATION: "THE USE OF THE LEGISLATIVE RECESS FOR ENACTMENT OF LAWS LIKE THIS, VISIBLY DISTANT FROM THE INSTITUTIONAL PROBLEM, HAS THE UNFORTUNATE EFFECT OF WEAKENING CONGRESS."

4. IN THE SOCIAL WELFARE FIELD, ASIDE FROM THE CHANGES IN VACATION RIGHTS AND THE DENUNCIA VAZIA (REFTEL B), PRESIDENT GEISEL USED HIS POWERS UNDER AI-5 TO AMEND ARTICLES 21 AND 43 OF THE CONSTITUTION. THE AMENDMENT LIMITED OFFICIAL USE

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TO ARTICLE 21 INCREASES THE FEDERAL GOVERNMENT'S AUTHORITY TO LEGISLATE AND RAISE FUNDS FOR PUBLIC SOCIAL WELFARE PROGRAMS, WHILE EFFECTIVELY PROHIBITING THE FLOW OF BENEFITS TO PRIVATE SOCIAL AND WELFARE FUNDS. COUPLED WITH THIS AMENDMENT, THE CHANGE IN ARTICLE 43 WILL GIVE CONGRESS GREATER AUTHORITY TO REGULATE WORKER HEALTH BENEFITS, EMPLOYEE PARTICIPATION IN PROFIT-SHARING PLANS, GUARANTEES OF JOB STABILITY, DISBURSEMENT OF FUNDS BY TRADE UNION ORGANIZATIONS AND MATERNITY ASSISTANCE PROGRAMS, AMONG OTHERS.

5. THE AMENDMENT TO ARTICLE 97 ESTABLISHES THAT AN INDIVIDUAL WHO HAS PASSED AN EXAMINATION FOR GOVERNMENT EMPLOYMENT MUST BEGIN SUCH EMPLOYMENT WITHIN FOUR YEARS AFTER THE EXAM'S RESULTS ARE PUBLISHED OR ELSE FORFEIT HIS RIGHT TO THE JOB; PREVIOUSLY, THERE WAS NO TIME LIMIT. THE CHANGE IN ARTICLE 151 BROADENS THE BASIS FOR REMOVING AN ELECTED OFFICIAL FROM OFFICE. UNDER THE TERMS OF THE AMENDMENT AN ELECTED OFFICIAL'S ACTIVITIES PRIOR

TO TAKING OFFICE, AS WELL AS HIS CONDUCT IN OFFICE,
WILL BE CONSIDERED IN RELATION TO THE FOUR OBJECTIVES
THE CONSTITUTION SEEKS TO PRESERVE: A DEMOCRATIC
REGIME, ADMINISTRATIVE PROBITY, LEGITIMACY OF ELECTIONS
AND MORAL STANDARDS FOR THE EXERCISE OF OFFICE.
PREVIOUSLY, PRIOR ACTIVITIES WERE ONLY TAKEN INTO
ACCOUNT IN TERMS OF MORAL STANDARDS, AND DISQUALIFICATION
AND REMOVAL FROM OFFICE ON THE BASIS OF ANY OF THE OTHER
OBJECTIVES HAD TO BE DONE UNDER THE SPECIAL POWERS OF
AI-5.

6. TWO DECREE LAWS WERE ALSO PUBLISHED IN THE DIARIO OFICIAL
OF APRIL 15, ALTHOUGH NEITHER WAS ANNOUNCED AT THE
TIME OF THE OTHER REFORMS. ONE, EFFECTIVE RETROACTIVELY
TO MARCH, 1, 1977, RAISES BY 30 PERCENT THE SALARIES AND
PENSIONS OF PRESENT AND FORMER EMPLOYEES OF THE FEDERAL
COURT OF APPEALS AND OF THE FEDERAL COUNCIL OF JUSTICE.
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THE OTHER EXEMPTS ALL FEDERAL GOVERNMENT PURCHASES OF
PROPERTY AND HOMES IN THE FEDERAL DISTRICT, FOR THE
PURPOSE OF HOUSING OF CIVIL AND MILITARY FEDERAL GOVERNMENT
EMPLOYEES, FROM AL FEES CONNECTED WITH THE REQUIRED
TRANSCRIPTS, REGISTRATIONS AND CERTIFICANTES OF OWNERSHIP.

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INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-01 INR-07
L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15
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FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 1202
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

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7. COMMENT. THE USE OF THE PRESIDENT'S EXTRA-ORDINARY POWERS TO PROMULGATE THESE NON-INSTITUTIONAL REFORMS WAS LARGELY UNEXPECTED, ALTHOUGH THE ONLY AMENDMENT PROVOKING SIGNIFICANT REACTION WAS TO ARTICLE 153. IT WAS DONDEMNED IN RATHER STRONG LANGUAGE BY A GAZETA MERCANTIL COLUMNIST AS A "DANGEROUS INCREASE RN THE GOVERNMENT'S AUTHORITARIAN CONTROL OVER THE NATION'S ECONOMIC LIFE" AND AN IN-TRUSION INTO THOSE "INDIVIDUAL RIGHTS ON MATTER OF TAXATION WHICH ARE AN ESSENTIAL ELEMENT OF THE CON-STITUTIONS OF ALL DEMOCRATIC COUNTRIES." IN A SIMILAR VEIN, ALBERTO FURUGUEM, DIRECTOR OF THE DEVELOPMENT BANK OF THE STATE OF RIO DE JANEIRO, DESCRIBED THE GO-VERNMENT'S ACTION AS "INCREASED FLEXIBILITY IN THE AREA OF POLITICAL TAXATION." THESE SENTIMENTS REFLECT IN PART THE GROWING DISENCHANTMENT IN THE BUSINESS COMMUNITY WITH THE GEISEL ADMINISTRATION, WHOSE INCREASING POLITICAL ISOLATION IS SEEN AS HAVING NEGATIVE ECONOMIC POLICY-MAKING RAMIFICATIONS. IN OUR JUDG-MENT, HOWEVER, THE BUSINESS REACTION SETS STRONG, PARTICULARLY GIVEN THE ANACHRONISM OF THE EXISTING LIMITED OFFICIAL USE

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LAW. WITH MACROECONOMIC UNDERTAINTY AS GREAT AS IT IS, IT IS NOT UNREASONABLE FOR THE GOB TO SEEK GREATER DISCRETIONARY FISCAL AUTHORITY AS AN INSTRUMENT OF STABILIZATION POLICY, FOR APPLICATION TO THE ECONOMY AS A WHOLE OR TO CERTAIN SECTORS THAT MIGHT BE AFFECTED EXCESSIVELY BY THE EVENTUAL DECELERATION OF THE ECONOMY. END COMMENT:
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